DOCKET FILE COPY ORIGINAL

FILE COPY

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

MAR 1 8 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act Of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	

Comments of Long Distance of Michigan, Inc. ("LDMI")

Mitchell F. Brecher
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, NW
Washington, DC 20006

Counsel for Long Distance of Michigan, Inc.

Dated: March 18, 2002

SUMMARY

Long Distance of Michigan, Inc. ("LDMI") is a CLEC located in Michigan that provides long distance and local telecommunications services. LDMI's strategy for entering the local exchange market in Michigan has been to utilize unbundled network element platforms (UNE-P) and then to migrate to facilities-based CLEC operations when economically reasonable. However, LDMI has encountered substantial roadblocks to competition erected by Ameritech, the competing ILEC in Michigan. LDMI urges the Commission to recognize the impediments to local competition present in Michigan and to facilitate the use of UNE-P by CLECs as a means to develop competition within the local telecommunications market.

In Michigan, there is substantial regulatory uncertainty regarding the availability of UNE-P as a means to provide competitive local exchange service. Ameritech has indicated that residential UNE-P will cease to be available after March 28, 2004 and that business UNE-P will cease to be available after March 28, 2003. Although the Michigan PSC ordered in 2000 that UNE-P offerings be tariffed, Ameritech only offered existing combinations of unbundled network elements under tariff. In early 2001 the Michigan PSC required Ameritech to offer by tariff combinations of unbundled network elements that Ameritech "ordinarily combines." The Michigan PSC also held, on rehearing of its 2001 decision, that it anticipated that determinations regarding ILECs' obligations to provide unbundled network element combinations will be made in the near future. LDMI urges the Commission to clarify that each ILEC is required to offer to CLECs any combination of unbundled network elements that the ILEC ordinarily combines and to order that ILECs continue to offer such UNE-P services for a period of at least five years. In addition, LDMI requests the Commission to ensure that unrestricted local switching remains available as an unbundled network element.

In addition to having only limited availability of UNE-P in Michigan, CLECs in Michigan have been subject to anticompetitive terms and prices for DS1 and DS3 special access facilities. For example, assuming a sixty month service term, Ameritech offers DS1s to ISPs at less than half the monthly rate as that offered to CLECs and does not charge ISPs an installation fee for the DS1. Moreover, the exorbitant prices charged by Ameritech to CLECs for DS1s, absent a sixty month term commitment by the CLECs, has slowed the ability of CLECs to offer broadband service in Michigan. Although LDMI and other CLECs could use enhanced extended links ("EELs") in place of DS1s or DS3s, Ameritech has placed onerous restrictions on the use of EELs. LDMI encourages the Commission to order the use of TELRIC pricing of DS1s and DS3s. In addition, LDMI requests the Commission to order ILECs to offer unrestricted access to EELs under tariff. The Commission's implementation of LDMI's suggestions regarding the availability of UNE-P and EELs and the pricing of DS1s and DS3s will ensure that competition in local telecommunications, as contemplated by the Telecommunications Act of 1996, is achieved.

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

MAR 1 8 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act Of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	

Comments of Long Distance of Michigan, Inc. ("LDMI")

Long Distance of Michigan, Inc. (LDMI), by its attorneys, hereby submits its comments in response to the Commission's notice of proposed rulemaking issued in the above-captioned proceeding[1], and states as follows:

Starting as a small long distance telephone company in Michigan in the early 1990s, LDMI has grown to become the largest telecommunications company headquartered in Michigan: an integrated communications provider which supplies long distance, local, data and other services to about 80,000 business and residence customers in Michigan and throughout the Midwest. Annual revenues of the company are approaching $100 million.

---

[1] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, *et al*, FCC 01-361, released December 20, 2001.

LDMI has competed effectively in the interexchange (long distance) telecommunications market segment. By the time of LDMI's founding in 1990, most legal and regulatory barriers to competition in the interexchange market had been removed. These barriers had been eliminated in large part through the efforts of the earliest competitive carriers, including, e.g., MCI Communications, Inc. and Sprint. Those efforts led to a series of regulatory and judicial rulings which established the right to compete throughout the interexchange market segment and which established obligations on those who operate local exchange networks to permit equal access to those networks for the origination and termination of interexchange services.

LDMI's founder, Jerry Finefrock, remembers those early years well: he joined the original Sprint, then known as Southern Pacific Communications Company, in California in 1974, and remained with that company during the next nine formative years. In those early years, the Commission was unwilling to allow interexchange service competition and attempted to limit competitive entry to services considered to be private line or dedicated services. It literally took a decision by the U.S. Court of Appeals for the District of Columbia Circuit in the Execunet litigation to establish a right to compete with AT&T – that era's incumbent monopolist – in the all-important switched services segment.[2] Even following those successful court battles which established the right to compete in the interexchange service marketplace, it was not until the divestiture of the Bell Operating Companies from AT&T and the imposition of an equal access obligation on those divested Bell companies pursuant to a court-approved consent decree that full and fair competition in the toll segment became possible.[3] To date, regulatory and

---

[2] MCI Telecommunications Corp. v. FCC, 561 F.2d 365 (D.C. Cir. 1977), *cert. den.* 434 U.S. 1040 (1978); see also MCI Telecommunications Corp. v. FCC, 580 F.2d 590 (1978).

[3] United States v. Western Electric Co., Inc. 552 F. Supp. 131 (D.D.C. 1983)

judicial rulings have not eliminated monopoly abuses and anticompetitive behavior in the local exchange market segment as has been the case in the interexchange market. Rather, the continued ability of this era's incumbent monopolists – the incumbent local exchange carriers (ILECs) – to limit access to their networks and to demand interconnection and network element prices far above their true costs of providing such elements has impeded LDMI and other emerging competitive local exchange carriers (CLECs) from having meaningful opportunities to compete in the local exchange marketplace. Substantial ILEC illegal and discriminatory behavior exists towards CLECs. And towards those abuses, the FCC most recently has been turning a blind eye. LDMI has been able to survive as a CLEC mainly through courageous regulatory action at the state level, particularly from the Michigan Public Service Commission.

In this Triennial Review, LDMI respectfully requests the FCC to step back, and look at the world briefly through the eyes of LDMI and other CLECs seeking to compete in those local markets long dominated by entrenched monopolists. Despite the implosion of many of the CLECs during the last year, all is not lost. It is not a foregone conclusion that the only outcome for local competition in the future will be a battle of the oligarchs. Smaller CLEC competitors like LDMI will only die if the FCC continues to ignore their pleas for fair rules of the game.

Recent Commission pronouncements have indicated that several Commissioners are of the view that the only "real" form of local competition is facilities-based CLEC competition and that those who seek to enter local markets by reselling services of ILECs or by use of ILEC network elements purchased on an unbundled basis (commonly referred to as "unbundled network elements") are something less than true competitors. This belief is ironic and is especially unfortunate in view of the fact that several of the larger telecommunications failures, including bankruptcies, have involved companies who attempted to implement costly and premature roll-outs of massive networks. The strategy of LDMI, and other fiscally prudent CLECs has been to commence operations using unbundled network element platforms (UNE-P) acquired from ILECs and then to migrate to facilities-based CLEC operation in those areas and those end-offices which have reached economic crossover where facilities-based operation becomes economically viable. This approach is similar to that deployed by successful competitive interexchange carriers more than two decades ago. Those companies began operations by using leased facilities and services and invested in their own network facilities when economic conditions warranted such investments.

But now, based on the likely outcome of pending FCC action, the underpinning of the best CLEC strategy may soon be dashed: UNE-P may be eliminated as the underlying economic baseline upon which our hopes and dreams, and intelligent growth, are based.

The FCC has been too willing to accept ILEC suggestions that limitations be placed on the effective use of UNE-P and EELs services. Competition, and the public's ability to have true choice for local services, has been the worse for it.

It is not too late for the FCC to realize some of these recent errors and to make corrections to help foster true local competition.

As a Michigan-based carrier, LDMI's primary ILEC vendor – and competitor – is Ameritech, which is part of SBC Communications. These comments focus on LDMI's specific experience with the roadblocks to competition erected by Ameritech in Michigan. However, LDMI strongly suspects its Michigan experience is similar to that which exists throughout most of the U.S.: ILECs continue to possess market dominance and economic power and continue to exploit that dominance and power to preclude and retard the growth of competition in the local service market.

THE LIMITED AVAILABILITY OF UNE-P IN MICHIGAN

UNE-P in Michigan is hampered by much regulatory uncertainty. Ameritech's "Mi2A Amendment" states that Ameritech's offering of residential UNE-P, under generally acceptable terms, prices and conditions, will end in just two years from now, on March 28, 2004.[4] As for Ameritech's offering of business UNE-P, important to Michigan's focus on improving business opportunities in the state, its similar expiration date under the Mi2A is March 28, 2003[5], only one year from now. The Mi2A also limits UNE-P by providing that "[i]n those Ameritech central offices where there are four (4) or more CLECs collocated for which Ameritech has provided UNEs, Ameritech may elect to not combine UNEs that are not already combined in that central office…"[6]

Ameritech's Tariff M.P.S.C. No. 20R, Part 19, Section 15, sheet 1.1[7], says "Existing UNE-P shall ***only*** be provided to telecommunications carriers for use in the provision of telecommunications services as specified and to the extent required by and subject to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("the Act"), the rules, regulations and orders of the FCC and the Michigan Public Service Commission, and any other applicable law." The Mi2A has essentially identical language at section 2.2.2.2.

---

[4] Ameritech Michigan, Mi2A Amendment, paragraph 2.2.6.

[5] *Id.*, paragraph 2.2.5.

[6] *Id.*,, paragraph 2.2.5.3.

[7] Michigan Bell Telephone Company, Tariff M.P.S.C. No. 20R, Part 19, Section 15, Original Sheet No. 1.1, effective September 19, 2000.

Michigan Bell's (Ameritech) Tariff M.P.S.C. No. 20R, Part 19, Section 21, Unbundled Local Switching with Shared Transport (ULS-ST), on Sheet 1, says quite cryptically, "ULS-ST is not available when Unbundled Local Switching is not required by law to be provided, including due to the applicability of 47 C.F.R. section 51.319(c)(1)(A)."[8] Although this tariff provision is not a model of clarity, it appears to be tied into the "four circuit rule", codified at 47 C.F.R. section 51.319(c)(2).[9]

It is generally recognized that businesses need to effectively plan their businesses out five years into the future, and establish business plans and business forecasts, which extend five years into the future.[10] And as famous business management consultant Peter Drucker has said, "What gets planned, gets done."[11] Indeed, SBC itself acknowledged such a need for five year forecasting in its comments in the Commission's Local Competition Proceeding following

---

[8] Michigan Bell Telephone Company, Tariff M.P.S.C. No. 20R, Part 19, Section 21, 1st Revised Sheet No. 1, effective March 30, 2001.

[9] 47 C.F.R. § 51.319(c)(2) states as follows: "Notwithstanding the incumbent LEC's general duty to unbundle local circuit switching, an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DS0) equivalents or lines, provided that the incumbent LEC provides nondiscriminatory access to combinations of unbundled loops and transport (also known as the "Enhanced Extended Link") throughout Density Zone 1, and the incumbent LEC's local circuit switches are located in: (i) The top 50 Metropolitan Statistical Areas as set forth in Appendix B of the Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, and (ii) in Density Zone 1, as defined in § 69.123 of this chapter on January 1, 1999."

[10] See, for example John A. Byrne, Business Week Cover Story, "Strategic Planning", Business Week, August 26,1996; Eric S. Siegel et al, *The Ernst & Young Business Plan Guide*, John Wiley & Sons, Inc., 1987; Robert Ronstadt, *Entrepreneurial Finance*, Lord Publishing, 1988, 1989; Pinson, Linda and Jinnett, Jerry, *Anatomy of a Business Plan, Marketplace Press, 1999;* and Kahrs, Kristin, Editor, *Business Plans Handbook*, Gale Research Inc., 1994.

[11] Business Plans for Small Business, How to Plan Your Business, http://bizplans.hypermart.net.

enactment of the 1996 Telecommunications Act. SBC specifically and vociferously argued for capacity reservations "based on a five-year business forecast."[12]

Various CLECs, in their annual 10-K filings with the Securities and Exchange Commission, have noted what the limitations and uncertainties on UNE-P service have had upon them, and their attempts to plan and grow their businesses. The S.E.C. requires accuracy and honesty in statements made in annual 10-K filings, and thus great weight should be given to the following quotations out of CLEC 10-K S.E.C. annual reports.

McLeodUSA Incorporated, Form 10-K for the fiscal year ended December 31, 2000: "As the entrenched, traditional local exchange carriers are compelled, by regulatory changes and competitive forces, to unbundle their network components and to permit resale of their network elements and products, we plan to continue to provide our customers with a full range of communications services...The original seven regional Bell operating companies that resulted from the divestiture by AT&T in 1984 of its local telephone systems are now concentrated into four large incumbent 'MegaBells'... If these MegaBells or other companies deny or limit our access to their communications network elements or wholesale services, we may not be able to offer our communications services at profitable rates..."[13]

---

[12] SBC comments at 18-19, as referenced in paragraph 1132, FCC 96-325, the first Report & Order, August 28, 1996.

[13] Securities and Exchange Commission, McLeodUSA Incorporated, Annual Report Form 10-K, for the fiscal year ended December 31, 2000.

Z-Tel Technologies, Inc., S.E.C. Form 10-K, for the year ended December 31, 2000: We have commenced operations in seventeen states using unbundled network components [but] we cannot be certain that unbundled network components will continue to be available in their present form in those states... and any adverse changes in the unbundled network elements platform regulatory or competitive environment could have a material adverse effect on our business, financial condition and results of operations.[14]

Birch Telecom, Inc., S.E.C. Form 10-K, for the fiscal year ended December 31, 2000, comments as follows: "UNEP: We lease all of the unbundled network elements necessary to provide service from the incumbent local exchange carriers...Our current business strategy depends in large part on our ability to provide service to our customers through UNEP. Our ability to provide service to customers through UNEP depends in turn on FCC and state commission rulings requiring incumbent local telephone carriers to lease us the necessary network elements... The FCC also modified the local switching unbundled network element, concluding that incumbents need not provide access to unbundled local circuit switching for customers with four or more lines that are located in the densest parts of the top 50 metropolitan statistical areas so long as the incumbent makes available an alternative arrangement for reaching customers, known as the enhanced extended link... ***Notwithstanding the FCC's ruling, unrestricted access to unbundled switching is available in Texas, Oklahoma and Kansas, where state rulings require incumbent telephone companies to make switching available as an unbundled network element...*** although the FCC establishes nationwide guidelines governing entry by new telecommunications service providers under the Telecommunications Act, state

[14] Securities and Exchange Commission, Z-Tel Technologies, Inc., Form 10-K, Annual Report for the year ended December 31, 2000.

regulatory commissions also have major roles in implementing the local competition provisions of the act... ***State regulatory commissions are also permitted to establish additional unbundled network elements consistent with federal law and policy...*** Some states in our current operating region, including Texas, Oklahoma, Kansas and Missouri, ***have gone beyond the FCC's minimum requirements and independently ordered Southwestern Bell to make UNEP available throughout those states under terms more favorable to new telecommunications providers than those required by the FCC.*** We cannot assure you that those favorable state rulings will remain in place. If UNEP does not continue to be available on the favorable terms ordered by the states, our business could be materially adversely affected."[15]

On February 9, 2000 in Case Nos. U-11104 and U-12143, the Michigan PSC found that it had the authority under Section 355(2) of the Michigan Telecommunications Act (MTA) and under Section 261(c) of the Communications Act to order the tariffing of an unlimited UNE-P offering. In an order issued the same day in Case No. U-12320, the Michigan PSC ordered the tariffing of such a UNE-P offering within 30 days.

Despite the clear finding of authority and direction by the Michigan PSC, Ameritech did not tariff the required UNE-P offering. Instead, Ameritech divided UNE combinations into two categories: existing combinations and new combinations. Only the existing combinations were to be made available under tariff. New combinations were to be made available only under an interconnection agreement (now known as the Mi2A) and would be available for only a limited time and with more restrictions than a purchase of unbundled elements under tariff. Ameritech claimed a combination can only be considered "existing" when it is "currently combined" or

---

[15] Securities and Exchange Commission, Birch Telecom, Inc., Form 10-K, for the fiscal year ended December 31, 2000. [Emphasis added.]

does not require manual work on Ameritech's part to provide physical connections at the central office, at an outside plant location, or at the customer's premises. Ameritech had admitted that, under its definition, a CLEC ordering UNE combinations under tariff would not be able to provide service to a new residence or to install second lines at existing locations. In that Michigan PSC proceeding, CLECs argued that the definition of existing UNE combinations should include any combinations that Ameritech "ordinarily combines" in providing service to its own retail customers. Under this definition, new lines or additional lines would be considered an existing UNE combination.

On January 4, 2001, the Michigan PSC issued an order in Case No. U-12320, which addressed several issues regarding the availability of UNE combinations. After discussing these approaches, and noting that the issue was important because existing combinations have to be offered by tariff, the Michigan Commission stated:

> The Commission determines that defining existing UNE-P and EEL combinations to include those configurations that Ameritech Michigan "ordinarily combines" is more persuasive than Ameritech Michigan's definition. Ameritech Michigan's position would permit it to withhold from CLECs the types of UNE combinations that it routinely assembles to provide service to its own retail customers. To accept a definition as restrictive as this would confer an unfair advantage on Ameritech Michigan by allowing it to leverage its control of telephone network facilities in competing with CLECs to fulfill routine requests for retail service. As a matter of policy, the objective of promoting local competition in Michigan would not be well served by this definition. The Commission finds that Ameritech Michigan should define and provide for existing combinations in both its tariff and the M2A to include the types of situations encompassed by the CLECs' "ordinarily combined" standard. [Order of January 4, 2001, at pages 9-10; emphasis added.]

Thus, under the Michigan PSC's order, the standard for when a UNE combination is considered existing is clearly the "ordinarily combined" standard.

The Michigan PSC issued an Order on Rehearing on March 19, 2001. In the rehearing order, it stated:

> There continues to be considerable dispute among the parties relating to the intent of FCC and court orders regarding the incumbent local exchange carriers' (ILECs) obligations to provide UNE combinations. Further, it is now anticipated that a number of additional determinations may be reached in the near future that may clarify the obligations of ILECs in this regard." [March 19, 2001 Order on Rehearing, at pages 4-6, footnotes omitted, emphasis added]

Similarly, in state commission proceedings in Indiana, Wisconsin and Illinois, the CLECs have prevailed on the UNE combinations issue.[16] Clear and helpful FCC rulings on this subject do not yet exist. In Michigan and other states, CLECs have not secured the unrestricted right to UNE combinations that Ameritech ordinarily combines in its own networks.

In this Triennial Review proceeding, the Commission should make it clear that, under the UNE-P tariff, and other UNE-P venues, CLECs may obtain any UNE combinations that Ameritech or other ILECs ordinarily combine: additional business or residence phone lines, new business or residence phone lines, and new or additional DS1 or DS3 EELs lines.

The task of establishing a firm and continuing foundation for UNE-P remains incomplete, and the progress made to date is at risk. NARUC has recognized this peril, for example, and has passed on November 14, 2001 a Resolution Concerning The UNE Platform indicating its support for universal availability of UNE-Ps. LDMI respectfully urges the Commission to use this opportunity to demonstrate its commitment to full implementation of the pro-competition

---

[16] *See* Order, *Petition Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 40751-INT-03, pp. 44-48 (IURC Jan. 3, 2001); Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, Case No. 05-MA-120, pp. 52-53 (PSCW Oct. 12, 2000); *see also* Hearing Examiner's Proposed Order, *Investigation into the compliance of Illinois Bell Telephone Company with the order in Docket 96-0486/0569 Consolidated regarding the filing of tariffs and the accompanying cost studies for interconnection, unbundled network elements and local transport and termination and regarding end to end bundling issues*, ICC Docket No. 98-00396, pp. 83-93 (June 7, 2001).

objectives of the 1996 Telecommunications Act by stating unequivocally that UNE-P combinations must be provided by ILECs in a manner consistent with the holdings of the Michigan PSC and the other referenced state commissions.

The NARUC resolution of last November on UNE-P made several things clear. First, NARUC's belief that UNE-P is equally important to the success of local telecom competition to that of facilities based operation. Second, that with the drying-up of investment in CLECs across the country, UNE-P is needed now more than ever if competition is to have an opportunity to develop. Third, that UNE-P should be made a permanent offering. And fourth, that the state commissions felt a need to forcefully impart their views on UNE-P to the FCC.

The FCC needs to insure the continued availability of unrestricted Local Switching as an unbundled network element ("UNE"), to insure that the "sunset" provisions of the Mi2A and other similar arrangements, contracts and tariffs do not fore CLECs to exit the market, and actions to insure the ability of CLECs to assure investors that UNE-P will continue out through a reasonable planning horizon. Shortly, Ameritech and other ILECs will almost certainly cite the FCC's *UNE Remand Order* as justification for not offering switching as a UNE for small business customers with over three lines in urban metropolitan statistical areas (MSAs) in Michigan and other states. LDMI respectfully urges the FCC to forbear from enforcement or application of the "four circuit" restrictions for five years from the date of the instant decision, in order for CLEC business plans and business forecasts be made without uncertainty or impairment. LDMI concurs with SBC's position articulated in its comments in CC Docket No. 96-98 that five years is a reasonable period for this. As noted, in that proceeding, SBC specifically and vociferously argued for capacity reservations "based on a five-year business forecast."[17] Section 51.317 of the FCC's rules authorizes this Commission to provide such a time extension, as long as the Commission independently finds that CLECs are impaired if CLECs cannot provide switching in these instances. Without such a finding, small business customers in Detroit, and in other cities in Michigan and across the nation, will lose competitive choices, and hundreds of thousands of access lines would be denied competitive alternatives to ILEC local telephone service. Similarly, the FCC should order the offering of UNE-P service by the ILECs to be made permanent, or at a minimum, to extend for five years hence the expiration date for UNE-P service for both business and residential UNE-P.

EELs, PRIVATE LINES, AND ILEC DISCRIMINATORY BEHAVIOR AGAINST NON-FACILITIES-BASED CLECs

Michigan CLECs purchase DS1s (T1s) or DS3s necessary to connect to customer locations out of Ameritech's Tariff F.C.C. No. 2. Other ILECs have similar tariffs on file and in effect. These are referred to as "Special Access" facilities. While the FCC has the authority to investigate the lawfulness of the charges for such services and to prescribe more lawful rates or terms, it has not done so.

Many CLECs serve small and medium-sized businesses and residential users. Such smaller customers do not generate sufficient traffic volumes to warrant the investments required for non-facilities-based CLECs to build fiber optic facilities direct to such customer locations. Consequently, non-facilities-based CLECs are dependent on Ameritech or other ILECs for the "last mile" to reach such customers. These CLECs must purchase their "last mile" DS1s to

---

[17] SBC comments at 18-19, as referenced in paragraph 1132, FCC 96-325, "The first Report & Order In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996", August 28, 1996.

customer locations out of Ameritech's Tariff F.C.C. No. 2 tariff (or similar RBOC tariffs), at exorbitant rates.

As will be seen, Ameritech's actions in the pricing and terms for DS1 service to carriers and customers is anticompetitive.

In Michigan, under Ameritech's FCC No. 2 Special Access tariff, the typical DS1 (average mileage distance: 18 miles) is priced at $1,129.16 per month, and $1,493.00 to install. Carriers can buy the same facility under a 60-month Optional Payment Plan, in which case the monthly price drops to $502.86, and the installation charge drops to $50.00. However, the carrier is then locked into a penalty charge for early termination that can be as large as $30,000. Meanwhile, Ameritech's favored distributors and a few favored ISPs can buy the same circuit for $199 per month with no installation charges.

Obviously, customers will not buy DS1 service from a CLEC at $1,129.16 per month (assuming a pass through only of direct facility cost, with no administrative handling charge or profit). Such a price is uneconomic and purchases at such prices would be irrational. The only way to get a lower price is to commit to a 60-month arrangement, which reduces the price somewhat and, inexplicably, reduces the installation charge to an almost insignificant amount.

While Ameritech and the Commission have insisted that CLECs should purchase DS1s for customers out of Ameritech Tariff F.C.C. No. 2 at inflated prices, Ameritech has taken quite another approach with those customers and users whom it does not view its competitors. Ameritech, in the last few years, has quietly signed various private ICB (Individual Case Basis) contracts with Internet service providers (ISPs), individual large customers, and others, at prices dramatically lower than the prices which Ameritech charges a CLEC.

Under ICB terms, an ISP or Ameritech 5-star distributor or other favored Ameritech customer may obtain a DS1 that costs LDMI $1,129.16 under month-to-month terms, or $502.86 under a 60 month OPP commitment, for about $199.00 per month. And instead of a $1,493.00 installation charge, or $50.00 under 60 month OPP terms, the favored customer under ICB terms often has an installation charge from Ameritech of zero.

Certain ISPs and others are thus able to offer their customers ***retail*** prices for DS1s which are well below a CLEC's underlying ***costs*** for purchasing DS1 facilities from Ameritech. Some such favored purchasers have even entertained reselling such capacity to CLECs with a markup, only to back off when they realize Ameritech would probably not allow such an arrangement.

Enhanced Extended Links (EELs) provide a technically equivalent arrangement, but Ameritech places anticompetitive restrictions on the use of EELs. The reason for the insistence by Ameritech and the other ILECs to such use restrictions is quite clear. Under TELRIC-type pricing, that same 18-mile average-distance T1 that costs $1,129.16 under month-to-month pricing in Ameritech's FCC No. 2 tariff, costs only about $90.00 per month under month-to-month EELs pricing. The appropriate question for the Commission to ask is: how can it allow a price like $1,129.16 per month to exist, when the cost-based price is $90? What twisted sense of regulatory logic is this, when the result has been to prevent the availability of broadband connections to American businesses and homes at economic rates?

LDMI today has approximately 150 such T1s between its switch in the Detroit area, and its various business customers. Today, only three-tenths of one percent of LDMI's customers enjoy such a broadband connection. And the reason is the unconscionably high price. LDMI's marketing department recently conducted a study to determine how many of its customers could justify such a T1 if the price were to be the $90 per month based on cost-based EELs pricing.

The answer: fully 30 percent of LDMI's customers could cost-justify T1 service under fair and equitable pricing. The result would be an increase of 100 times in the number of LDMI customer T1s. And if that would be the case for LDMI customers, the same kind of result would be seen, with cost-based T1 pricing, by hundreds of thousands of businesses, and millions of consumers, all across the country.

Notwithstanding all of the pronouncements about DSL service, T1 service represents the principal effective pathway for providing broadband connectivity and high-speed Internet access to many users over the next several years. A DS1 circuit can provide data at about three times the speed of DSL service. Alternatively, it can provide 24 simultaneous voice-grade channels, for local or long distance telephone access. And a DS1 circuit can be configured so that it simultaneously is providing ISDN-speed data, high-speed Internet access, and local and long distance access.

Slowness in broadband growth can, in part, be attributed to the high prices for DS1s and DS3s, and in SBC's high prices for DSL service. SBC's pricing is excessive in comparison to ICB prices made available by it to certain favored customers -- prices that SBC refuses to make available to CLECs, and compared to other ILECs' pricing.

The Commission can and should order the creation of exception pricing of DS1 and DS3 special access pricing for CLEC and IXC circuits using TELRIC pricing. As a temporary expedient, in order to provide action ***now*** to alleviate the illegal and anti-competitive special access pricing of the ILECs, the FCC should implement temporary exception pricing for special access, set as the EELs TELRIC monthly prices already established, plus a 20% add-on for additional profit and miscellaneous. This would put the cost to carriers of a typical 18-mile DS1 at about $90 monthly plus 20%, or $108 monthly. The total non-recurring charge should not exceed $50.00, the NRC for an Ameritech special access DS1 under 5-year-term pricing today. Similar DS3 pricing should be established.

Part of the problem could be alleviated if the Commission were to require Ameritech and the other ILECs to provide EEL facilities directly under tariff and without restrictions, as the CLECs have repeatedly requested. Until EELs become available, a significant barrier to the development of effective competition in the provision of local telecommunications services will remain.

Ameritech's current EELs tariff and Mi2A contract restrictions improperly restrict and deny the use of EELs for voice services that are not specifically "local dial tone," and also restrict and deny the use of EELs for data services of any kind. Such restrictions contradict the conclusions reached in industry studies on broadband, which find that "[t]he integration of voice and data service delivery will soon become the norm, and end users will demand these advanced services at costs far below today's offerings from incumbent service providers [for] current and future broadband services, such as switched voice, high-speed data services, and high-speed Internet access."[18]

To allow Ameritech Michigan to place EELs restrictions in its tariff and in the Michigan Mi2A (and similar agreements in other states) is to be inconsistent with FCC policies. In particular, such use restrictions are contrary to the Commission's policies on creating incentives for competition. Indeed, the principle upon which TELRIC pricing is based is that new entrants should make their decisions whether to purchase UNEs or build their own facilities based on the

[18] James Im, distinguished member of consulting staff, Lucent Technologies Worldwide Services, "Providing Local Broadband Services: A Review of Five Last-Mile Technologies," at pages 5 and 3.

relative economic costs of these options. The FCC established TELRIC pricing in order to insure that the 1996 Act is implemented in a manner that is pro-competition rather than pro-competitor.

The FCC recognizes that if Ameritech and other ILECs are allowed to charge rates that exceed TELRIC, new entrants' investment decisions will be distorted, and will lead to inefficient entry and investment decisions. Because use restrictions on EELs protect above-TELRIC pricing of certain network functionalities, the Commission's allowance of EELs restrictions in the EELs tariff and Michigan Mi2A (and other similar agreements in other states) have already induced inefficient investment by sending distorted pricing signals to the industry. As a result, the Commission's act of default by not sweeping away the EELs restrictions has violated bedrock Commission policies regarding the need for cost-based pricing of wholesale inputs in order to maximize consumer welfare under the Communications Act of 1934, and the Telecommunications Act of 1996.

Ultimately, the real victims of the unlawful EELs use restrictions will be consumers, many of whom are still waiting to realize any benefits either in price or service from the market-opening provisions of the Telecommunications Act of 1996. In fact, the only beneficiaries of the EELs use restrictions are the ILECs themselves whose anti-competitive special access prices and monopoly profit streams continue to be shielded from market forces by a Commission regulatory umbrella, as they have been for many years.

There is nothing in FCC orders to support Ameritech contentions that *every* DS1 carried over a multiplexed/channelized transport facility (often a DS3) must qualify for conversion before *any* DS1s can be converted to EELs. In short, the fact that a DS1 EEL circuit traverses a DS3 transport facility *does not* require an "all or nothing" conversion of the DS3. Ameritech appears to have inappropriately interpreted Commission orders to its advantage. Notably, the FCC used the word "each" (as in "each of the individual DS1 circuits") and not "every" (as in all DS1 circuits).[19] There is no support for Ameritech's interpretation. Thus, the conversion to UNEs of DS1 circuits that traverse DS3 transport segments that also are used to carry other DS1s that may not be identified (or "eligible") for conversion is not co-mingling and is not in any other way barred by the FCC's safe harbor restrictions. The FCC's "each of the individual DS1 circuits" language properly is interpreted to mean each individual DS1 circuit identified by a CLEC and eligible for conversion.

There is also no need for an ILEC-sponsored impairment analysis of these or other LDMI recommended FCC actions on special access T1s and EELs. The Commission has determined that "requesting carriers are impaired without access to unbundled dedicated and shared transport network,"[20] and therefore found that ILECs must provide unbundled access to "all technically feasible capacity-related services such as DS1-DS3 and OC3-OC96 dedicated transport services."[21] It is technically feasible to derive DS1s from DS3s, DS3s from OC3s, etc. Thus, the FCC's current rules require unbundling of DS1 and DS3 transport, regardless of the fact that such elements may be derived from higher capacity facilities. Again, Ameritech and other ILECs may not deny a request for unbundled DS1 interoffice transport facilities simply because their networks employ a DS3 on the requested route and the CLEC has not requested that the ILEC unbundle all DS1s carried over the DS3. Thus the ILEC ploy to delay and deny CLECs

---

[19] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Supplemental Order Clarification, 15 FCC Rcd 9587, 9597-9600, ¶22 (footnote omitted) (emphasis added) (*Supplemental Order Clarification*).

[20] *UNE Remand Order,* ¶ 321.

[21] *Id.,* ¶ 322.

access to EELS has no legal foundation. The Commission has already conducted the required impairment tests and its current unbundling obligations extend to elements derived from channelized facilities.

The FCC can and should order the creation of exception pricing of DS1 and DS3 special access pricing for CLEC and IXC circuits using TELRIC pricing under 47 USC § 261.

As a temporary solution, in order to provide action ***now*** to alleviate the illegal and anti-competitive special access pricing of Ameritech Michigan and other ILECs noted above, the FCC should implement temporary exception pricing for special access, set at the EELs TELRIC monthly prices already established, plus a 20% add-on for additional profit and miscellaneous. This would put the cost to carriers of a typical 18-mile DS1 at about $90 monthly plus 20%, or $108 monthly. The total non-recurring charge should not exceed $50.00, the NRC for an Ameritech special access DS1 under 5-year-term pricing today.

CONCLUSION

Wherefore, LDMI respectfully urges the Commission to act in accordance with the views expressed in these comments.

Respectfully submitted,
LONG DISTANCE OF MICHIGAN, INC.

Mitchell F. Brecher

GREENBERG TRAURIG, LLP
800 Connecticut Avenue, NW
Washington, DC 20006
(202) 331-3152

Its Attorneys

Dated: March 18, 2002

CERTIFICATE OF SERVICE

I, Michelle D. Diedrick, an Executive Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that on March 18, 2002, a true and correct copy of the foregoing Comments of Long Distance of Michigan, Inc. (LDMI) was hand delivered to the following:

William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, SW
The Portals
Washington, D.C. 20554
(original and four copies)

Qualex International
Federal Communications Commission
445 12th Street, SW
Portals II
Room CY-B402
Washington, D.C. 20554

Michelle D. Diedrick